

ORIGINAL NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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APR 11 2007

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

E-01749A-07-0237

DOCKETED BY

ML

IN THE MATTER OF THE APPLICATION OF  
GRAHAM COUNTY ELECTRIC COOPERATIVE,  
INC. FOR PERMISSION TO TRANSFER CERTAIN  
OF ITS ASSETS TO THE TOWN OF THATCHER  
AND TO AMEND ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN RELATION  
THERE TO

DOCKET NO. E-01749A-\_\_-\_\_

APPLICATION

Pursuant to A.R.S. § 40-285 and A.A.C. R14-2-202.B, Graham County Electric  
Cooperative, Inc. ("GCEC" or the "Cooperative"), in support of its Application, states as  
follows:

1. GCEC is an Arizona non-profit, electric distribution cooperative which supplies  
service to approximately 6,000 members in Graham County, Arizona.

2. In Decision No. 33006 dated April 6, 1961, the Commission issued a Certificate  
of Convenience and Necessity ("CC&N") to the Cooperative to operate an electrical system in  
most areas within Graham County south and east of the San Carlos Apache Indian Reservation  
which are outside the corporate limits of the towns of Safford and Thatcher as their municipal  
limits existed in April of 1961 when the CC&N was issued.

3. The Town of Thatcher ("Thatcher" or the "Town") is a municipal corporation of  
the State of Arizona which operates an electric distribution system within its corporate  
boundaries.

4. On September 17, 1973, GCEC and the Town entered into an Agreement modifying a prior 1946 agreement between them. This agreement gives Thatcher the right upon written notice, payment of a purchase price determined by formula and other terms to acquire certain distribution facilities of the Cooperative and thereafter provide electrical service to customers in territory that has been annexed by Thatcher. The Town has exercised its rights under this agreement (a) to acquire certain of the distribution facilities of the Cooperative and (b) after closing of the transaction, to supply electric service to customers within the area where the facilities are located. The residents of Thatcher approved the acquisition at the Town's primary election in September of 2006.

5. Attached as Exhibit 1 is a true and correct copy of the Asset Purchase Agreement dated March 26, 2007 (the “Sale Agreement”) between GCEC and Thatcher. Under Sections 2 and 3 of the Sale Agreement, the Town will purchase GCEC’s assets identified in its Exhibit B for \$731,783.35 and at closing Thatcher will assume the right, obligation and responsibility to provide electric utility services to customers located within the Service Area described in its Exhibit A. Section 1.2 of the Sale Agreement requires Commission approval of the transfer of the assets as well as deletion of the Service Area from the Cooperative’s CC&N prior to close of the transaction.

6. There are no line extension agreements in effect between the Cooperative and any of the customers located in the Service Area. As to customer deposits, in its final bill to customers leaving its system, GCEC will credit to the customer any deposit amounts and membership fees owing.




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Steve Olea  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Copy of the foregoing mailed this  
11<sup>th</sup> day of April, 2007, to:

Sheryl A. Sweeney  
Ryley Carlock & Applewhite  
One North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4417  
Attorneys for the Town of Thatcher

  
10430-12/1532207

**EXHIBIT 1**

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made on March 26, 2007, by and between the Town of Thatcher, an Arizona municipal corporation ("Buyer") and Graham County Electric Cooperative, Inc., an Arizona non-profit corporation ("Seller").

### RECITALS:

A. Seller currently provides electric utility services (the "Services") to an area lying generally north of First Street and U.S. Highway 70 to the southern bank of the Gila River, the boundaries of which are outlined on the map attached as Exhibit A (the "Service Area").

B. The assets listed on the attached Exhibit B are used by Seller to provide the Services to the Service Area.

C. Buyer desires to purchase the assets listed on Exhibit B and assume the responsibility to provide the Services to the Service Area, all pursuant to the terms and conditions of this Agreement.

### AGREEMENT:

#### SECTION 1

##### Definitions

Unless otherwise stated in this Agreement, the following terms will have the following meanings:

1.1 Closing. "Closing" means the closing of the transactions contemplated by this Agreement on the Closing Date.

1.2 Closing Date. "Closing Date" means the date and time mutually agreed to in writing by the parties to this Agreement following receipt of approval of the transfer of Assets to Buyer and deletion of the Service Area from Seller's Certificate of Convenience and Necessity ("CC&N") by the Arizona Corporation Commission ("Commission").

1.3 Closing Place. "Closing Place" means the offices of Gallagher & Kennedy, P.A., in Phoenix, Arizona, or such other place as may be mutually agreed in writing by the parties to this Agreement.

#### SECTION 2

##### Transfer; Purchase Price and Payment

2.1 Transfer of the Assets. On the Closing Date and at the Closing Place, Seller will sell, transfer, assign and convey to Buyer, by a bill of sale and other good and sufficient instruments of conveyance, and Buyer will purchase from the Seller, the assets listed on the attached

Exhibit B and any and all related right of ways or easements (collectively referred to as the "Assets").

2.2 Sale "As Is". Seller is transferring the Assets at the request of the Buyer pursuant to the terms of that certain Agreement between the parties dated September 17, 1973. Buyer has conducted all independent investigations desired by Buyer of any and all matters concerning the Assets and this transaction. By closing, Buyer accepts the Assets "AS IS". Seller does not make and expressly disclaims any warranty of any kind concerning the Assets or Services to the Service Area. No warranty of Seller of any kind, express or implied (including, without limitation, any WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR HABITABILITY) with respect to the Assets transferred pursuant to this Agreement will survive the Closing.

2.3 Information; Limitation on Liability. Buyer acknowledges that it is familiar with the Assets, the Services, and the Service Area, and their respective characteristics, capabilities and limitations. Buyer acknowledges that information of any kind or nature relating to the Assets that Buyer has received or may receive from Seller or Seller's agents, is, will be, or has been furnished on the express condition that Buyer will make Buyer's own independent verification of the accuracy of the information. Buyer will not assert any liability against Seller by reason of Seller's having furnished any information about the Assets to Buyer or by reason of any information being incorrect or inaccurate in any respect.

2.4 The Purchase Price and Payment. The Purchase Price for the Assets is \$731,783.35, payable in cash at Closing.

### SECTION 3

#### Assumption of Services for Service Area

3.1 Assumption of Services. At the Closing, Seller relinquishes and Buyer assumes the right, obligation and responsibility to provide Services to the Service Area.

### SECTION 4

#### Representations and Warranties of Seller

The Seller, acknowledging that Buyer is relying on the following representations and warranties in entering into this Agreement, represents and warrants to Buyer, as of the date of this Agreement and as of Closing, as follows:

4.1 Organization and Standing. Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Arizona, with all requisite corporate power and authority to enter into and perform this Agreement in accordance with its terms.

4.2 Authorization. The Seller has all requisite power and authority to enter into and perform the terms of this Agreement. This Agreement and all supporting documentation constitute valid and legally binding obligations of the Seller, enforceable in accordance with their

terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting creditor's rights generally.

4.3 Absence of Conflicting Agreements or Required Consents. Except for the approval of the Commission, the execution, delivery and performance of this Agreement and all supporting documentation by Seller does not require the consent of any third party or a vote of Seller's members and does not conflict with, constitute grounds for termination of, result in a breach of, or constitute a default under, any applicable law, judgment, order, injunction, decree, rules, regulation, ruling of any court or governmental instrumentality or any agreement, instrument, license or permit to which Seller is now subject.

## **SECTION 5**

### **Representations and Warranties of Buyer**

Buyer, acknowledging that the Seller is relying on the following representations and warranties in entering into this Agreement, represents and warrants to the Seller as follows:

5.1 Organization and Standing. Buyer is a municipal corporation of the State of Arizona, validly existing and in good standing under the laws of the State of Arizona, with all requisite power and authority to enter into and perform this Agreement in accordance with its terms.

5.2 Authorization. The execution, delivery and consummation of this Agreement by Buyer have been duly authorized by all necessary action. This Agreement constitutes a valid and legally binding obligation of Buyer, enforceable in accordance with its terms, except as provided by A.R.S. § 38-511. Notice of A.R.S. § 38-511 is hereby given.

5.3 Absence of Conflicting Agreements or Required Consents. Except for the approval of the Commission, the execution, delivery and performance of this Agreement by Buyer does not require the consent of any third party and neither conflicts with, results in a breach of, or constitutes a default under any applicable law, judgment, order, injunction, decree, rules, regulation, or ruling of any court or governmental instrumentality, nor does it conflict with, constitute grounds for termination of, result in a breach of, or constitute a default under, any agreement, instrument, license or permit to which Buyer is now subject.

## **SECTION 6**

### **Covenants**

6.1 Joint Covenants of the Parties. The parties agree that following the signing of this Agreement:

(a) If any event should occur, either within or without the knowledge or control of any party, which would prevent fulfillment of the conditions upon the obligations of any party hereto to consummate the transactions contemplated by this Agreement, the parties will use their best efforts to cure the same as expeditiously as possible.



(b) The parties acknowledge that Seller's counsel will prepare and cause to be filed with the Commission an application seeking its approval for the transfer of the Assets to Buyer and deletion of the Service Area from its CC&N. The parties agree to cooperate fully with each other in preparing, filing, prosecuting, and taking any actions necessary with respect to this application and other requests or actions, if any, which are or may be necessary to obtain the consent of any governmental instrumentality or any other third party to the transactions contemplated by this Agreement, or which are or may be necessary or helpful in order to accomplish the transactions contemplated by this Agreement, including, but not limited to, the approval of the Commission.

## **SECTION 7**

### **Conditions of Closing by Buyer**

The obligations of Buyer hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

#### **7.1 Representations, Warranties, Covenants.**

(a) All representations and warranties of the Seller will be true and complete on and as of the Closing Date as though made on and as of the Closing Date, except for changes contemplated by this Agreement or changes that are not materially adverse and arose after the date hereof in the ordinary course of business.

(b) All of the terms, covenants and conditions to be complied with or performed by the Seller on or prior to the Closing Date will have been complied with or performed.

**7.2 Instruments of Conveyance and Transfer.** On the Closing Date, Seller will have delivered to Buyer a Bill of Sale in substantially similar form as Exhibit C transferring and assigning to Buyer the Assets, and Seller will have taken all steps necessary to put Buyer in possession and operating control of the Assets.

**7.3 Consents.** The parties will have received (without any conditions or provisions materially adverse to Buyer) all required third party consents and permissions which may be required in connection with the transfer of and conveyance of the Assets to Buyer, including, but not limited to, the approval of the Commission of the transfer of the Assets to Buyer and the deletion of the Service Area from Seller's CC&N.

**7.4 Waiver.** The foregoing conditions of Closing in this section are for the benefit of Buyer and, with the exception of approval of the Commission, any one or more of the foregoing may be waived by Buyer in writing without prejudice to the rights of Buyer with respect to any other conditions of Closing.

## SECTION 8

### Conditions of Closing by the Seller

The obligations of the Seller hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

#### 8.1 Representations, Warranties and Covenants.

(a) All representations and warranties of Buyer will be true and complete in all material respects on and as of the Closing Date as through made on and as of the Closing Date, except for changes contemplated or permitted by this Agreement or changes that are not materially adverse and arose after the date hereof in the ordinary course of business.

(b) All of the terms, covenants, and conditions to be complied with or performed by Buyer on or prior to the Closing Date will have been complied with or performed in all material respects.

8.2 Consents. The parties will have received (without any conditions or provisions materially adverse to Seller) all required third party consents and permissions which may be required in connection with the transfer and conveyance of the Assets to Buyer, including, but not limited to, the approval of the Commission of the transfer of the Assets to Buyer and the deletion of the Service Area from Seller's CC&N.

8.3 Waivers. The foregoing conditions of Closing are for the benefit of the Seller and, with the exception of the approval of the Commission, may be waived by Seller in writing without prejudice to the rights of the Seller with respect to any other conditions of Closing.

## SECTION 9

### Transfer Taxes, Fees and Expenses

9.1 Transfer Taxes. All costs of transferring the Assets to Buyer pursuant to this Agreement, including without limitation, recordation, transfer and documentary taxes and fees, and any sales or use taxes, will be paid by the Buyer.

9.2 Other Expenses. Except as otherwise expressly provided in this Agreement, the parties will pay their respective expenses incurred under or in connection with this Agreement and obtaining Commission approval, including, but not limited to, attorneys' fees.

## SECTION 10

### Indemnification

10.1 Indemnification of Buyer. Seller hereby agrees to indemnify Buyer against and hold Buyer harmless for, from and against any and all losses, claims, demands, damages, assessments, costs and expenses (including reasonable attorneys' fees) of every kind, nature or

description, (collectively referred to as "Damages"), resulting from, arising out of or relating to: (a) the breach of any representation or warranty of Seller in this Agreement (including the exhibits and schedules) or in any other document delivered to Buyer pursuant to this Agreement; (b) the breach by Seller of any covenant or agreement contained in or arising out of this Agreement or the transactions contemplated by this Agreement; (c) providing the Services to the Service Area prior to the Closing Date of this Agreement; or (d) the ownership or operation of the Assets prior to the Closing Date.

10.2 Indemnification of Seller. Buyer hereby agrees to indemnify Seller against and hold Seller harmless for, from and against any and all losses, claims, demands, damages, assessments, costs and expenses (including reasonable attorneys' fees) of every kind, nature or description, (collectively referred to as "Damages"), resulting from, arising out of or relating to: (a) the breach of any representation or warranty of Buyer in this Agreement (including the exhibits and schedules) or in any other document delivered to Seller pursuant to this Agreement; (b) the breach by Buyer of any covenant or agreement contained in or arising out of this Agreement or the transactions contemplated by this Agreement; (c) providing the Services to the Service Area after the Closing Date of this Agreement; or (d) the ownership or operation of the Assets after the Closing Date.

## SECTION 11

### Miscellaneous Provisions

11.1 Termination Rights. This Agreement may be terminated by either Buyer or the Seller, if not then in material default, upon written notice to the other upon the occurrence of any of the following:

(a) In the case of Buyer, if the Seller defaults in the observance or in the due and timely performance of any of its covenants or agreements contained in this Agreement, which have not been cured on or prior to the Closing Date, and in the case of the Seller, if Buyer defaults in the observance or in the due and timely performance of any of Buyer's covenants or agreements contained in this Agreement, which have not been cured on or prior to the Closing Date; provided, however, that termination pursuant to this paragraph will not be effective unless the terminating party will have given to the party in default at least 20 days advance notice of its claim of default so as to afford the party in default the opportunity to cure.

(b) If on the Closing Date any of the conditions precedent to the obligations of the parties set forth in this Agreement have not been satisfied or waived by the party for whose benefit the condition is imposed.

(c) If there are in effect on the Closing Date any judgment, decree, appeal, order or award that would prevent or make unlawful the closing of this Agreement or otherwise deprive the party of the benefit of this Agreement.

11.2 Benefit and Assignment. This Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted

assigns. None of the parties may voluntarily assign its interest under this Agreement without the prior written consent of the other parties.

11.3 Effect and Construction of this Agreement. This Agreement and the exhibits and schedules embody the entire Agreement and understanding of the parties and supersede any and all prior agreements, arrangements and understandings relating to matters provided for in this Agreement. No amendment, waiver of compliance with any provision or condition, or consent pursuant to this Agreement will be effective unless evidenced by an instrument in writing signed by the parties. The captions are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement. The construction and performance of this Agreement will be governed by the laws of the State of Arizona (except for the choice of law provisions thereof).

11.4 Exhibits and Schedules. All exhibits and schedules attached to this Agreement will be deemed part of this Agreement and incorporated into this Agreement.

11.5 Notices. Any notice, demand or request required or permitted to be given under the provisions of this Agreement will be in writing and will be deemed to have been duly delivered on the date of personal delivery or on the date of mailing if mailed by registered or certified mail, postage prepaid and return receipt requested, and will be deemed to have been received on the date of personal delivery or on the date set forth on the return receipt, to the following addresses, or to such other address as any party may request by notifying in writing all of the other parties to this Agreement.

To Buyer:

Town of Thatcher  
P.O. Box 670  
Thatcher, Arizona 85552  
Attention: Terry Hinton

To Seller:

Graham County Electric Cooperative, Inc.  
P.O. Drawer B  
Pima, Arizona 85543  
Attention: Steve Lines

11.6 Severability. If any one or more of the provisions of this Agreement are held or found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

11.7 Attorneys' Fees. If any action is brought to recover any amount under this Agreement, or for or on account of any breach of, or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party will be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorneys' fees, the amount of which will be fixed by the court, and will be made a part of any award or judgment rendered.

11.8 Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement.

11.9 Representation by Counsel. Each of the parties has been represented by legal counsel of his own choice. This Agreement has been negotiated among them and if there is any ambiguity, no presumption construing the Agreement against a party will be imposed because the draft of this Agreement was initially prepared by counsel for the party.

11.10 Venue. The proper venue for any proceeding at law or in equity or under the provisions for arbitration will be Graham County, Arizona, and the parties waive any right to object to the venue.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day, month, and year first above written.

GRAHAM COUNTY ELECTRIC COOPERATIVE,  
INC., an Arizona non-profit corporation

By: Steve M. Lines.  
Its: GENERAL MANAGER

"Seller"

TOWN OF THATCHER, an Arizona municipal  
corporation


By: Terry Hinton  
Its: Manager

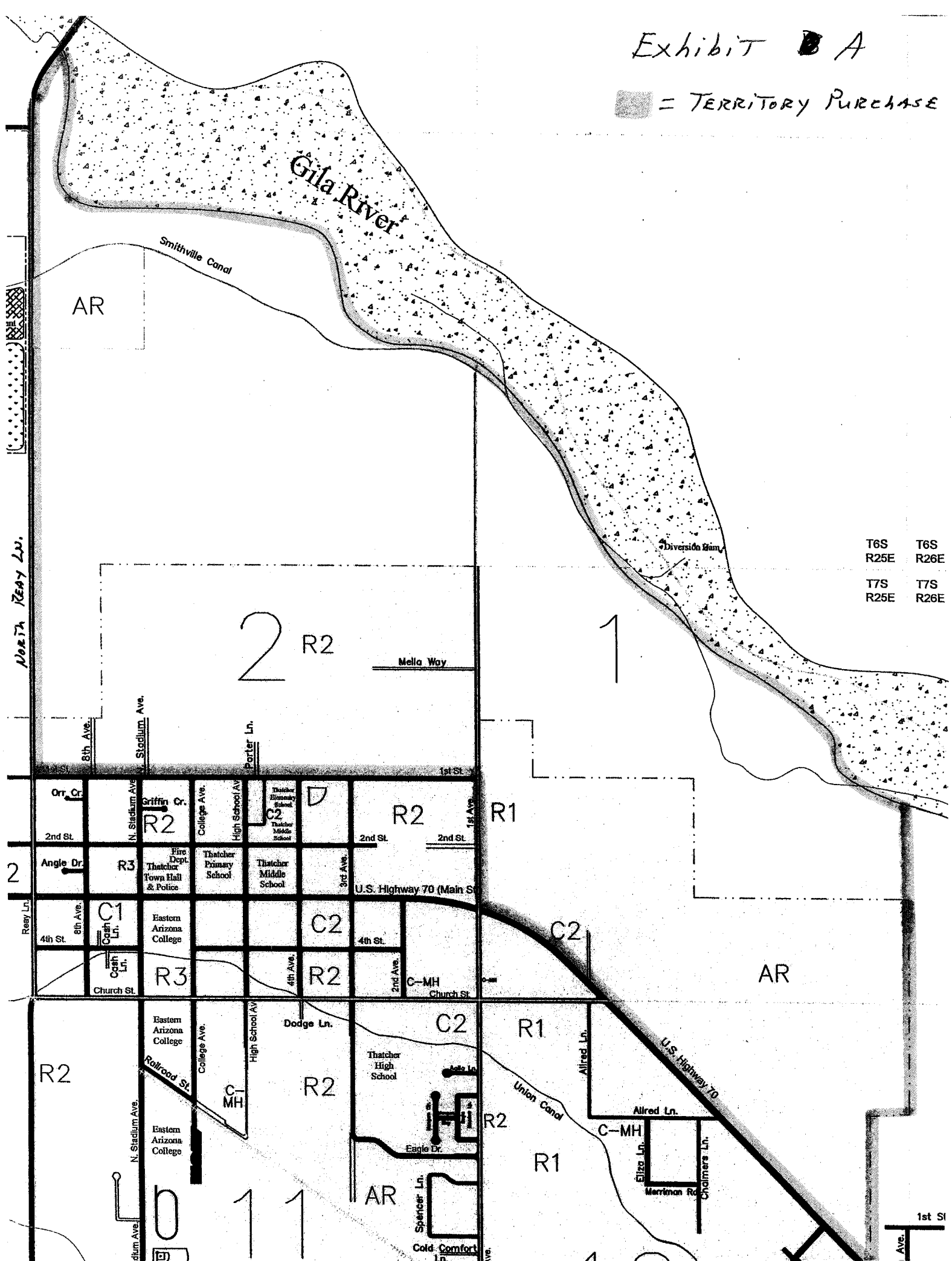
"Buyer"

**Exhibit A**

**Service Area**

# Exhibit A

 = TERRITORY PURCHASE



T6S	T6S
R25E	R26E
T7S	T7S
R25E	R26E

## **Exhibit B**

### **Assets**



### THATCHER TERRITORY PURCHASE

## UNIT INVENTORY

[illegible]

## WIRE INVENTORY

10430.0012/1450502v4

## THATCHER TERRITORY PURCHASE

## UNDERGROUND INVENTORY

[illegible]

**Exhibit C**

**BILL OF SALE**

THE UNDERSIGNED, Graham County Electric Cooperative, Inc., an Arizona non-profit corporation ("Seller"), in consideration of the sum of \$731,783.35 and other good and valuable consideration received from Town of Thatcher, an Arizona municipal corporation ("Buyer"), does hereby grant, bargain, sell and convey to Buyer, its successors and assigns, forever, the goods, chattels and property described on Exhibit A attached (the "Assets"), AS IS.

IN WITNESS WHEREOF, this Bill of Sale is signed this \_\_\_\_ day of \_\_\_\_\_, 2007.

GRAHAM COUNTY ELECTRIC COOPERATIVE,  
INC., an Arizona non-profit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

## THATCHER TERRITORY PURCHASE

## UNIT INVENTORY

[illegible]

# WIRE INVENTORY

10430.0012/1450502v4

## THATCHER TERRITORY PURCHASE

## UNDERGROUND INVENTORY

[illegible]





## EXHIBIT 2

### AFFIDAVIT OF STEVE LINES

I, Steve Lines, being duly sworn upon my oath, state as follows:

1. I am the General Manager of Graham County Electric Cooperative, Inc. ("GCEC"). The information set forth in this Affidavit is based upon my familiarity with GCEC's operations generally in my position as General Manager and, more specifically, my familiarity with the Asset Purchase Agreement between GCEC and the Town of Thatcher ("Thatcher") dated MARCH 26<sup>th</sup>, 2007 (the "Sale Agreement").
2. Pursuant to the Sale Agreement, upon closing, Thatcher will purchase certain assets from GCEC which are used to provide electric utility services to the Service Area identified in the Sale Agreement and thereafter will assume the responsibility to provide electric utility services to customers in the Service Area.
3. I have caused to be reviewed the records of GCEC. There are no line extension agreements currently in effect between GCEC and any customer located within the Service Area. As to customer deposits held by GCEC from customers within the Service Area, in its final bill to customers leaving its system, GCEC will credit to the customer any deposit amounts and membership fees owing.

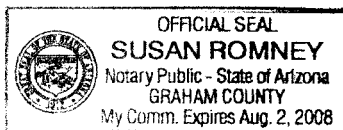
I declare under penalty of perjury that the foregoing is true and correct.

DATED this 29 day of MARCH, 2007.

Steve Lines.  
STEVE LINES

STATE OF ARIZONA       )  
                                      ) ss.  
County of Graham       )

The foregoing instrument was acknowledged before me this 29 day of MARCH,  
2007, by Steve Lines, the General Manager of Graham County Electric Cooperative, Inc., an  
Arizona corporation, on behalf of the corporation.



Susan Romney  
Notary Public

My Commission Expires:

03/02/2008

**EXHIBIT 3**

EXHIBIT 3

AFFIDAVIT OF TERRY HINTON

I, Terry Hinton, being duly sworn upon my oath, state as follows:

1. I am the Town Manager of the Town of Thatcher ("Thatcher") and am authorized to speak on behalf of Thatcher in relation to its obligations and intentions concerning the Asset Purchase Agreement between Thatcher and Graham County Electric Cooperative, Inc. ("GCEC") dated March 26, 2007 (the "Sale Agreement").

2. Pursuant to the Sale Agreement, upon closing, Thatcher will purchase certain assets from GCEC which are used by GCEC to provide electric utility services to the Service Area identified in the Sale Agreement and, thereafter, Thatcher will assume the responsibility to and will provide electric utility services to current and future customers located in the Service Area.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 6 day of April, 2007.

Terry Hinton  
TERRY HINTON

STATE OF ARIZONA       )  
                                      ) ss.  
County of Graham       )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of April, 2007, by Terry Hinton, the Town Manager of the Town of Thatcher, a municipal corporation on behalf of the Town.

Cathy Edwards  
Notary Public

My Commission Expires:

Nov. 3, 2007

